

AMENDED IN SENATE MAY 21, 2003

AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY MARCH 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 371**

**Introduced by Assembly Member La Suer**

February 14, 2003

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An act to amend Section 1246 of the Business and Professions Code, and to amend Section 23158 of the Vehicle Code, relating to blood tests.

### LEGISLATIVE COUNSEL'S DIGEST

AB 371, as amended, La Suer. Blood tests.

Under existing law, only specified medical and laboratory personnel may withdraw blood for purposes of testing its alcoholic content at the request of a peace officer. These personnel include unlicensed laboratory personnel regulated under specified existing laws that provide for and determine the required qualifications for a category of “certified phlebotomy technicians.” In the context of clinical laboratory work, certified phlebotomy technicians generally may not withdraw blood unless supervised by a physically available physician and surgeon, nurse, or clinical laboratory licensee.

This bill would permit a person who has been issued a “certified phlebotomy technician” certificate to withdraw blood in certain locations with general supervision, as defined, at the direction and in the presence of a peace officer, for forensic purposes, regardless of whether the person is employed by a clinical laboratory.

Existing law provides civil and criminal immunity to various medical personnel and businesses from liability for the reasonable, nonviolent administration of a blood test when requested in writing by a peace officer.

This bill would add “agencies” to those parties provided this immunity.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1246 of the Business and Professions  
2 Code is amended to read:

3 1246. (a) Except as provided in subdivisions (b) and (c), and  
4 in Section 23158 of the Vehicle Code, an unlicensed person  
5 employed by a licensed clinical laboratory may perform  
6 venipuncture or skin puncture for the purpose of withdrawing  
7 blood or for clinical laboratory test purposes upon specific  
8 authorization from a licensed physician and surgeon, provided that  
9 he or she meets both of the following requirements:

10 (1) He or she works under the supervision of a person licensed  
11 under this chapter or of a licensed physician and surgeon or of a  
12 licensed registered nurse. A person licensed under this chapter, a  
13 licensed physician or surgeon, or a registered nurse shall be  
14 physically available to be summoned to the scene of the  
15 venipuncture within five minutes during the performance of those  
16 procedures.

17 (2) He or she has been trained by a licensed physician and  
18 surgeon or by a clinical laboratory bioanalyst in the proper  
19 procedure to be employed when withdrawing blood in accordance  
20 with training requirements established by the State Department of  
21 Health Services and has a statement signed by the instructing  
22 physician and surgeon or by the instructing clinical laboratory  
23 bioanalyst that this training has been successfully completed.

24 (b) (1) On and after the effective date of the regulations  
25 specified in paragraph (2), any unlicensed person employed by a  
26 clinical laboratory performing the duties described in this section  
27 shall possess a valid and current certification as a “certified  
28 phlebotomy technician” issued by the department. However, an  
29 unlicensed person employed by a clinical laboratory to perform



1 these duties pursuant to subdivision (a) on that date shall comply  
2 with this requirement ~~within~~ *by April, 2006, which is* three years  
3 ~~after from~~ the effective date of ~~those~~ *the* regulations.

4 (2) The department shall adopt regulations for certification by  
5 January 1, 2001, as a “certified phlebotomy technician” that shall  
6 include all of the following:

7 (A) The applicant shall hold a valid, current certification as a  
8 phlebotomist issued by a national accreditation agency approved  
9 by the department, and shall submit proof of that certification  
10 when applying for certification pursuant to this section.

11 (B) The applicant shall complete education, training, and  
12 experience requirements as specified by regulations that shall  
13 include, but not be limited to, the following:

14 (i) At least 40 hours of didactic instruction.

15 (ii) At least 40 hours of practical instruction.

16 (iii) At least 50 successful venipunctures.

17 However, an applicant who has been performing these duties  
18 pursuant to subdivision (a) may be exempted from the  
19 requirements specified in clauses (ii) and (iii), and from 20 hours  
20 of the 40 hours of didactic instruction as specified in clause (i), if  
21 he or she has at least 1,040 hours of work experience, as specified  
22 in regulations adopted by the department.

23 It is the intent of the Legislature to permit persons performing  
24 these duties pursuant to subdivision (a) to use educational leave  
25 provided by their employers for purposes of meeting the  
26 requirements of this section.

27 (3) Each “certified phlebotomy technician” shall complete at  
28 least three hours per year or six hours every two years of  
29 continuing education or training. The department shall consider a  
30 variety of programs in determining the programs that meet the  
31 continuing education or training requirement.

32 (4) He or she has been found to be competent in phlebotomy by  
33 a licensed physician and surgeon or person licensed pursuant to  
34 this chapter.

35 (5) He or she works under the supervision of a licensed  
36 physician and surgeon, licensed registered nurse, or person  
37 licensed under this chapter, or the designee of a licensed physician  
38 and surgeon or the designee of a person licensed under this chapter.

39 (6) The department shall adopt regulations establishing  
40 standards for approving training programs designed to prepare

1 applicants for certification pursuant to this section. The standards  
2 shall ensure that these programs meet the state's minimum  
3 education and training requirements for comparable programs.

4 (7) The department shall adopt regulations establishing  
5 standards for approving national accreditation agencies to  
6 administer certification examinations and tests pursuant to this  
7 section.

8 (8) The department shall charge fees for application for and  
9 renewal of the certificate authorized by this section of no more  
10 than twenty-five dollars (\$25).

11 (c) (1) Notwithstanding any other provision of law, a person  
12 who has been issued a "certified phlebotomy technician"  
13 certificate pursuant to this section may draw blood at the request  
14 and in the presence of a peace officer for forensic purposes in a jail,  
15 law enforcement facility, or medical facility, with general  
16 supervision.

17 (2) As used in this subdivision, "general supervision" means  
18 that the supervisor of the technician is licensed under this code as  
19 a physician and surgeon, physician assistant, clinical laboratory  
20 bioanalyst, registered nurse, or clinical laboratory scientist, and  
21 reviews the competency of the technician before the technician  
22 may perform blood withdrawals without direct supervision, and  
23 on an annual basis thereafter. The supervisor is also required to  
24 review the work of the technician at least once a month to ensure  
25 compliance with venipuncture policies, procedures, and  
26 regulations. The supervisor, or another person licensed under this  
27 code as a physician and surgeon, physician assistant, clinical  
28 laboratory bioanalyst, registered nurse, or clinical laboratory  
29 scientist, shall be accessible to the location where the technician  
30 is working to provide onsite, telephone, or electronic consultation,  
31 ~~if~~ *within 30 minutes when needed*.

32 (d) The department may adopt regulations providing for the  
33 issuance of a certificate to an unlicensed person employed by a  
34 clinical laboratory authorizing only the performance of skin  
35 punctures for test purposes.

36 SEC. 2. Section 23158 of the Vehicle Code is amended to  
37 read:

38 23158. (a) Notwithstanding any other provision of law, only  
39 a licensed physician and surgeon, registered nurse, licensed  
40 vocational nurse, duly licensed clinical laboratory scientist or

1 clinical laboratory bioanalyst, a person who has been issued a  
2 “certified phlebotomy technician” certificate pursuant to Section  
3 1246 of the Business and Professions Code—~~or~~, unlicensed  
4 laboratory personnel regulated pursuant to Sections 1242, 1242.5,  
5 and 1246 of the Business and Professions Code, or certified  
6 paramedic acting at the request of a peace officer may withdraw  
7 blood for the purpose of determining the alcoholic content therein.  
8 This limitation does not apply to the taking of breath specimens.  
9 An emergency call for paramedic services takes precedence over  
10 a peace officer’s request for a paramedic to withdraw blood for  
11 determining its alcoholic content. A certified paramedic shall not  
12 withdraw blood for this purpose unless authorized by his or her  
13 employer to do so.

14 (b) The person tested may, at his or her own expense, have a  
15 licensed physician and surgeon, registered nurse, licensed  
16 vocational nurse, duly licensed clinical laboratory scientist or  
17 clinical laboratory bioanalyst, person who has been issued a  
18 “certified phlebotomy technician” certificate pursuant to Section  
19 1246 of the Business and Professions Code—~~or~~, unlicensed  
20 laboratory personnel regulated pursuant to Sections 1242, 1242.5,  
21 and 1246 of the Business and Professions Code, or any other  
22 person of his or her own choosing administer a test in addition to  
23 any test administered at the direction of a peace officer for the  
24 purpose of determining the amount of alcohol in the person’s blood  
25 at the time alleged as shown by chemical analysis of his or her  
26 blood, breath, or urine. The failure or inability to obtain an  
27 additional test by a person does not preclude the admissibility in  
28 evidence of the test taken at the direction of a peace officer.

29 (c) Upon the request of the person tested, full information  
30 concerning the test taken at the direction of the peace officer shall  
31 be made available to the person or the person’s attorney.

32 (d) Notwithstanding any other provision of law, no licensed  
33 physician and surgeon, registered nurse, licensed vocational nurse,  
34 duly licensed clinical laboratory scientist or clinical laboratory  
35 bioanalyst, person who has been issued a “certified phlebotomy  
36 technician” certificate pursuant to Section 1246 of the Business  
37 and Professions Code—~~or~~, unlicensed laboratory personnel  
38 regulated pursuant to Sections 1242, 1242.5, and 1246 of the  
39 Business and Professions Code, or certified paramedic, or  
40 hospital, laboratory, agency, or clinic employing or utilizing the

1 services of the licensed physician and surgeon, registered nurse,  
2 licensed vocational nurse, duly licensed clinical laboratory  
3 scientist or clinical laboratory bioanalyst, person who has been  
4 issued a “certified phlebotomy technician” certificate pursuant to  
5 Section 1246 of the Business and Professions Code ~~or~~, unlicensed  
6 laboratory personnel regulated pursuant to Sections 1242, 1242.5,  
7 and 1246 of the Business and Professions Code, or certified  
8 paramedic, owning or leasing the premises on which tests are  
9 performed, shall incur any civil or criminal liability as a result of  
10 the administering of a blood test in a reasonable manner in a  
11 hospital, clinical laboratory, medical clinic environment, jail, or  
12 law enforcement facility, according to accepted venipuncture  
13 practices, without violence by the person administering the test,  
14 and when requested in writing by a peace officer to administer the  
15 test.

16 (e) Notwithstanding any other provision of law, a person who  
17 has been issued a “certified phlebotomy technician” certificate  
18 pursuant to Section 1246 of the Business and Professions Code and  
19 who is authorized by this section to draw blood at the request and  
20 in the presence of a peace officer for purposes of determining its  
21 alcoholic content, may do so in a jail, law enforcement facility, or  
22 medical facility, with general supervision.

23 (f) The Certified Phlebotomy Technician I or II shall carry a  
24 current, valid identification card issued by the State Department  
25 of Health Services, attesting to the technician’s name, certificate  
26 type, and effective dates of certification, when performing blood  
27 withdrawals.

28 (g) As used in this section, “general supervision” means that  
29 the supervisor of the technician is licensed under the Business and  
30 Professions Code as a physician and surgeon, physician assistant,  
31 clinical laboratory bioanalyst, registered nurse, or clinical  
32 laboratory scientist, and reviews the competency of the technician  
33 before the technician may perform blood withdrawals without  
34 direct supervision, and on an annual basis thereafter. The  
35 supervisor is also required to review the work of the technician at  
36 least once a month to ensure compliance with venipuncture  
37 policies, procedures, and regulations. The supervisor, or another  
38 person licensed ~~under this code~~ as a physician and surgeon,  
39 physician assistant, clinical laboratory bioanalyst, registered  
40 nurse, or clinical laboratory scientist, shall be accessible to the

1 location where the technician is working to provide onsite,  
2 telephone, or electronic consultation, ~~if~~ *within 30 minutes when*  
3 needed.

4 (h) Nothing in this section shall be construed as requiring the  
5 certified phlebotomy technician who is authorized to withdraw  
6 blood by this section at the request and in the presence of a peace  
7 officer for purposes of determining alcoholic content to be  
8 associated with a clinical laboratory or to be directly supervised  
9 after competency has been established.

10 (i) If the test given under Section 23612 is a chemical test of  
11 urine, the person tested shall be given such privacy in the taking  
12 of the urine specimen as will ensure the accuracy of the specimen  
13 and, at the same time, maintain the dignity of the individual  
14 involved.

15 (j) The department, in cooperation with the State Department  
16 of Health Services or any other appropriate agency, shall adopt  
17 uniform standards for the withdrawal, handling, and preservation  
18 of blood samples prior to analysis.

19 (k) As used in this section, “certified paramedic” does not  
20 include any employee of a fire department.

21 (l) Consent, waiver of liability, or the offering to, acceptance  
22 by, or refusal of consent or waiver of liability by the person on  
23 whom a test is administered, is not an issue or relevant to the  
24 immunity from liability for medical or law enforcement personnel  
25 or other facilities designated under subdivision (d).

